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09/831,449	08/13/2001	James Lucas	3552-0107P	4275

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EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/831,449

Applicant(s)

LUCAS ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 48-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**This non-final action is in response to the communication received on 06/09/2005**

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 48, 49 and 77-79 of Application No. 09/831,449 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 27 and 30-31 of U.S. Patent No. 6,610,990. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Claims 1 and 27 of U.S. Patent No. 6,610,990 fully suggests claims 48 and 77 of Application No. 09/831,449.

Claims 4 and 30 of U.S. Patent No. 6,610,990 fully suggests claims 49 and 78 of Application No. 09/831,449.

Claim 31 of U.S. Patent No. 6,610,990 fully suggests claim 79 of Application No. 09/831,449.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Bailey et al (U.S.P.N. 6,028,315).

With respect to claims 48, 77 and 79, the Bailey reference discloses an apparatus (figure 5) and a method for sterilizing surfaces of a container, which is made up of glass substance or plastic substance (col.1, lines 3-6) including the following: UV lamp (figure 1, 4) within an enclosure (figure 5, 111), a microwave energy source for exciting the lamp (figure 5, 104) and an enclosure that is optically transparent waveguide (figure 5, 111 and col.6, lines 55-58) and wholly surrounds the UV lamp. The

feature "wholly surrounding the ultraviolet" does not exclude the waveguide as having holes or openings as long as it completely surrounds the lamp. The enclosure (figure 5, 111) wholly surrounds the UV lamp.

With respect to claims 49-55, 59-60, 62-64, 66, 70, 74 and 78, the Bailey reference teaches the following: UV lamp has no electrode (col.5, lines 6-7), element in the vapor form (col.5, lines 56-57), mercury (col.5, line 58), a dominant wavelength from 200 nm to 280 nm (col.3, lines 7-9), the waveguide controls the flow of microwave energy from the enclosure (the walls of the waveguide 111 are made of quartz material as taught in col.5, lines 55-58 that inherently controls the flow of microwave energy), the waveguide blocks the flow of microwave energy from the enclosure (in figure 5, the bottom portion of walls 111 in touch with column 110 blocks microwave energy), the enclosure includes quartz or a UV-transparent plastic material (col.5, lines 55-56), the UV lamp has an elongated form (figure 2, 18), the waveguide has a cylindrical form (figure 5, 111), a magnetron (figure 5, 104), a pathguide to guide the microwave energy from the microwave energy source to the UV lamp (figure 2, unlabeled arrow in 24 from 14 to 18), the pathguide defines linear path (figure 2, 24 is linear path), the UV light source includes a housing for the enclosure (figure 5, 107), the UV light source is for sterilizing surfaces of a container, which is made up of glass substance or plastic substance (col.1, lines 3-6) and the UV light source is for killing bacteria on the surface of goods (col.1, lines 4-6, surfaces of containers include bacteria).

***Claim Rejections - 35 USC § 103***

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8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 56-58, 65, 67, 72 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claims 48, 77, 79 and further in view of Spero et al (U.S.P.N. 3,911,318).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claims 56-58, 65, 67, 72 and 80, the Bailey reference fails to teach the following: the waveguide includes a conducting material, the waveguide includes a conducting mesh, which is made from copper, a non-linear path, housing has an inlet and an outlet and shaped to guide fluid flow from inlet past the enclosure to the outlet, fluid is water and the UV light source is for curing glues and inks. The Spero reference, which is in the art of exciting UV lamp by a microwave generator for irradiating fluids, teaches the following: the waveguide includes a conducting material (figure 2, 25 and col.9, lines 24-31), the waveguide includes a conducting mesh (figure 2, 25), which is made from copper (col.9, line 27), a non-linear path (figure 4, 10, 61, 62 and col.12, lines 6-10), housing has an inlet and an outlet and shaped to guide fluid flow from inlet past the enclosure to the outlet (figure 5, 79 and 72) and the UV light source is for known to be used for curing inks (col.3, lines 30-31). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method and apparatus of the Bailey reference by surrounding the waveguide with a copper mesh as taught by the Spero reference since the copper mesh serves to prevent microwave radiation leakage outside its cylindrical volume (col.9, lines 27-29).

**12.** Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claim 48 and further in view of Son et al (U.S.P.N. 4,073,770).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claim 61, fails to explicitly disclose the operating temperature of the UV lamp. The Son reference, which is in the art of irradiating compounds with UV source, teaches that the operating temperature is 60 degrees Celsius. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bailey reference by operating the UV lamp at such a temperature in order to prevent the overheating of the containers to be treated.

**13.** Claims 68, 71 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claim 48 and further in view of Wang (U.S.P.N. 6,135,838).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claims 68, 71 and 75, the Bailey reference fails to teach irradiating air or placing the UV lamp in an air conditioning system. The Wang reference, which is in the art cleaning air by using UV light, teaches placing UV lamp within the air conduit of an air conditioner (col.11, lines 32-33). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bailey reference by placing UV lamp within an air conditioner as taught by the Wang reference in order to improve the efficiency of air treatment by utilizing the convection means of the air conditioner (col.11, lines 34-36).

**14.** Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claim 48 and further in view of Spero et al (U.S.P.N. 3,911,318) and Ressler et al (U.S.P.N. 5,626,768).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claim 69, both the Bailey reference and the Spero reference fail to teach the use of a pump. The Ressler reference, which is in the art of sterilizing liquids using UV light, teaches the use of a pump (figure 1, 15). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bailey reference by including a pump as taught by the Ressler reference in order to control the velocity of the fluid treated past the UV source (col.4, lines 43-44).

**15.** Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claim 48 and further in view of Macklin et al (U.S.P.N. 4,504,955).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claim 73, the Bailey reference fails to teach using UV light to erase eproms. The Macklin reference teaches that it is known to use UV light to erase eproms (col.3, lines 15-17). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bailey reference by irradiating eproms as taught by the Macklin reference since eproms erasing can occur over a few seconds (col.9, lines 40-41).

16. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al (U.S.P.N. 6,028,315) as applied to claim 48 and further in view of Shie et al (U.S.P.N. 6,166,389).

The teachings of the Bailey reference have previously been set forth with respect to claims 48-55, 59-60, 62-64, 66, 70, 74 and 77-79; however, regarding claim 76, the Bailey reference fails to teach using UV light in a high intensity lighting system. The Shie reference, which is in the lighting art, teaches using UV light in a high intensity lighting system (col.10, lines 21-22). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the Bailey reference by using UV lamps in high intensity lighting systems as taught by the Shie reference in order to distribute the light transmission throughout the electromagnetic spectrum (col.3, lines 34-36).

### ***Response to Arguments***

17. Applicant's arguments filed on 06/09/2005 have been fully considered but they are not persuasive.

On page 7 of the Remarks section, applicant argues that, "In other words, Bailey's sealed unit 111 is an Ultraviolet lamp, not a UV transparent waveguide." The examiner disagrees. The Bailey reference teaches (col.6, lines 59-61) that the microwaves generated by the magnetron (figure 5:104) passes through the walls of the container (figure 6, unlabeled container) and the hollow column (figure 5:110) then through the wall of the sealed unit (figure 5:111). The wall of the sealed unit allows microwaves to pass through it. Furthermore, the Bailey reference shows a UV light

(figure 1:4) and also shows in figure 5 within sealed unit 111 an unlabeled UV lamp. Thus, the sealed unit is not a UV lamp and it functions as a waveguide for guiding microwave energy from microwave energy source (figure 5:104) to the UV lamp (figure 1:4 or unlabeled UV lamp within sealed unit 111 in figure 5). Then, UV light travels from the UV lamp through the sealed unit 111 (UV transparent) to the container to be irradiated.

On page 7 of the Remarks section, applicant argues that, "Bailey nowhere teaches that the hollow column 110 or the air passage 112 provides for the function of guiding microwave energy from the magnetron 104 to the ultraviolet lamp 111." As mentioned above, the function of guiding microwave energy from the magnetron 104 to UV lamp (figure 1:4 or unlabeled UV lamp within sealed unit 111 in figure 5) is achieved through the waveguide 111 in figure 5. In examining claims 48, 77 and 79, the requirements that constitute a waveguide is being UV transparent and wholly surrounding the Ultraviolet lamp only. With respect to method claim 79, the limitation "guiding microwave energy from a microwave energy source to an Ultraviolet lamp" is equivalent for guiding the microwave energy through the sealed unit 111 in order to generate UV light.

### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

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19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN KIM can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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